Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States

BRIAN WALLACE, ADMINISTRATOR OF
THE ESTATE OF NORMAN WALLCE,
Petitioner,

v.

CASE WESTERN RESERVE UNIVERSITY,
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of Ohio Eighth Appellate District

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the Ohio rule articulated in Reitz v. Macy Co. Department Store, 66 Ohio App. 3d 188 (1990), and adopted by the Ohio Supreme Court in this action, usurp the role of the jury and violate the Seventh Amendment right to a jury trial? Specifically, under Ohio law, before a wrongful death action proceeds to a jury, a judge must determine whether the fatal harm to the decedent, a business invitee, was reasonably foreseeable to the business owner under a totality of circumstances test, with the totality of circumstances being "somewhat overwhelming," an extremely vague and imprecise standard.

This case emanated from the May 9, 2003, nationally publicized shooting rampage at the Weatherhead School of Management, in the Peter B. Lewis building, on the campus of Case Western Reserve University ("CWRU" or "the University"). On that date Biswanath Halder, a former student of CWRU's Weatherhead School, entered a classroom building and shot to death Norman E. Wallace, a thirty year old graduate student.

As is characteristic of such rampage shootings at our country's educational institutions, this was not a random act by Halder. The true tragedy is that his rampage was foreseeable and preventable – by CWRU. There had been clear warning and notice to CWRU in June 2002 that if Halder lost his civil case regarding the intentional destruction of his computer files against a CWRU employee on appeal, he was "going to fuck those fuckers up" and kill people at the Weatherhead School. Halder made this threat of death while he displayed the hand gesture of shooting

with a gun which was then communicated to CWRU, thereby placing it on actual notice of his death threat, and giving rise to a concomitant duty to protect students, staff and faculty.

Halder was a clear and present danger, known by CWRU and its Weatherhead School since about 1999. The record below established that Halder had engaged in a protracted legal dispute with CWRU right up until the time of the shooting of Mr. Wallace. The record further established that CWRU did not treat Halder's claim seriously. On April 29, 2003, the Eighth Circuit Court of Appeals dismissed Halder's appeal of the dismissal of his lawsuit. A few days later, Halder carried out his threat as promised, by going on a shooting rampage at the Weatherhead School.

This case merits the attention of this Court because the public has a very great and understandable interest in seeing that educational institutions in Ohio will not ignore the safety of their students, staff and faculty when these institutions are put on notice of death threats and substantial dangers, like those that Petitioner demonstrated existed in this case when his decedent was gunned down. The holding of the Ohio Supreme Court affirming summary judgment for CWRU on the grounds that it had no duty because Halder's actions were not foreseeable jeopardizes campus safety throughout the United State. This decision is not only contrary to the national trend in campus rampage shootings, but it turned a blind eye to the wealth of evidence which showed CWRU was put on notice of the real and substantial threat Halder, a former graduate student, posed. Ohio courts of appeals are split on the appropriate test for foreseeability in a premises liability case based on

criminal conduct, and this Court has not yet had occasion to adopt a standard for academic institutions. Until this Court clarifies the foreseeability standard and provides guidance for its proper application in an academic setting, school administrators will assume that they need do nothing to protect students, staff and faculty even in the face of clear death threats.

PARTIES

Petitioner is the Estate of Norman Wallace. Respondent is Case Western Reserve University.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the Ohio Supreme Court.

OPINIONS BELOW

Court of Common Pleas Journal Entry and Opinion (August 27, 2008)

Court of Appeals of Ohio Journal Entry and Opinion (July 30, 2009)

Supreme Court of Ohio Entry Declining Jurisdiction (December 30, 2009)

JURISDICTION

The judgment of the Ohio Supreme Court was entered December 30, 2009. The jurisdiction of this Court is based on 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions involved in this case, U.S. Const. amend. VII and 28 U.S.C. § 1257, are reproduced in Appendix D and Appendix E, respectively.

STATEMENT OF THE CASE

This case arises from a wrongful death and survivorship action predicated on premises liability and negligence theories from the Mary 9, 2003, shooting death of Norman E. Wallace, a graduate student at CWRU's Weatherhead School of Management. The shooting occurred in the Peter B. Lewis Building. Norman was a 2004 candidate for a Master's in Business Administration. He was a student leader and the only African American male in the class of 2004, as well as a longtime academic standout and newly elected president of the Black MBA Student Association. The underlying action was filed by the executor of Norman's estate, his brother Brian, one of Norman's ten siblings. Norman was a product of the Mt. Calvary Pentecostal high school and had earned a Bachelor of Science degree in business administration from Youngstown State University in 1996.

From 1996 to 1999 Biswanath Halder was enrolled as a graduate student at the CWRU Weatherhead School of Management. After his graduation in 1999, Halder continued his studies at CWRU by enrolling in the MBA Plus program for the fall 1999 and spring 2000. As part of his studies, he used the computer lab on CWRU's campus. Halder was known to cause problems in the computer lab. On occasion, Halder logged onto up to three computers in the lab at one time, thereby preventing computer access to other students. On another occasion, a female student complained that Halder was harassing her in the lab, insisting she proofread his personal documents. In July 2000, Halder discovered that his email account had been hacked into, and all his computer files had

been deleted. Halder accused Shawn Miller, a computer technician employed by CWRU, as the individual whom he believed had hacked into his computer and deleted his life's (intellectual) work

In June 2001, Halder sued Shawn Miller in the Cuyahogo County Court of Common Please, claiming he hacked into Halder's website. CWRU, even though not a party to the matter, provided a defense for Miller since the incident was directly related to his employment with CWRU, and Miller also counterclaimed for defamation of character and intenetional inflciton of emotional distress. When Miller was sued, he spoke to Marion Hogue, Dean of Students at CWRU. Hogue had CWRU defend Miller and fight Halder's claims, and referred Miller to the University's legal counsel. Hogue did not provide any counsel or assistance to Halder even though a CWRU personnel had destroyed his files.

Halder was a pro se litigant for much of his case, giving him direct personal involvment with the University attorneys. Halder also continued to live at the same address, near many CWRU students, and he discussed it with his neighbors, CWRU law students, who in turn discussed it with other CWRU students and employees. Rather than undertake an approprate investiagation of Halder's accusations that a CWRU employee had destroyed his lifes work, CWRU wrote Halder a letter in Novermber 2001 abruptly terminating his computer lab privileges over a spam email that Halder did not send. In May 2002, the Universtiy also successfully fought Halder's motion to compel discovery and his motion to add the University as a defendant. In January 2003, at Miller's behest, the court ordered Halder to delete statements from his

website – a further loss of Halder's intellecutual work – in a way that he thought denied his due process. In Febuary 2003, when Miller's lawyer was insisting on Halder's compliance, he protested to the court that he had been misinformed about his opportunty to respond.[1]

Significantly, CWRU also knew its employees had **actually** hacked into Halder's website and **intentionally** provoked him. The record on summary judgment established that Chris Fenton, manager of the Weatherhad computer lab, and his girlfriend, Janis Kaghazwala, also a CWRU employee, had asserted their privilege against self incrimaintion at Halder's criminal trial in response to questions concerning whether they had hacked into and destroyed Halder's website or posted derogatory information concerning Halder on his website. Knowledge of this intentional provocation of Halder was imputable to CWRU, although the trial court and court of appeals failed to do so.

In May 2002, while Halder was struggling to add CWRU and other defendants to his lawsuit, Halder told CWRU law student Paul Helon that if he lost the court battle he would "fuck those fuckers up." Halder even clearly made a gesture with his hand as a gun, showing he was going to shoot the people at CWRU Weatherhead School if he lost his appeal. Helon was

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[1] The critical point is that even though Halder was no longer physically present on campus, the contact between Halder and his institution enemy was substantial, ongoing and recent. In fact during oral argument in the Court of Appeals counsel for CWRU stated CWRU is an inner city urban campus and Halder resided within in area directly adjacent to CWRU.

so concerned for Miller's safety that he sought out Miller and told him about Halder's threat. Miller then reported the threat to his CWRU supervisor Roger Bielefield,[2] saying "apparently Halder is interested in killing us." Bielefield merely told Miller not to worry and that Haldier "probaby would not do anythng." However, Miller's concern for his safety did not dissapate.

Although Bielefeld received a letter from Halder, he met only once with Halder. Bielefeld provided Halder with absolutely no investigatory informaton Halder requested of him. Bielefeld also received an August 27, 2000 email from Halder broadcast to the University at CWRU stating that the "evil man" Shawn Miller, an employee of CWRU Weatherhead School, deleted in a few seconds everything it took Halder a lifetime to create.

Since the death threat by Halder was prefaced on Halder losing his civil appeal in his case with Miller which was being defended by CWRU, Miller's concern for his safetly dramatically elevated in late April 2003 when Halder lost his appeal. At that time Miller was so concerned Halder would try to seriously physcially harm him, that he even went to his residential police force, the Cleveland Heights Police Department, for protection. He did this since CWRU and Bielefeld had done nothing to protect him from Halder. Miller also made his immediate supervisor at CWRU aware of these threats. Miller also told his co-worker Chris

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[2] Bielefeld is CWRU's Director of Research Computing and Information Technology at the Weatherhead School of Management.

Fenton of the Weatherhead Computer Lab of Halder's threat soon after he learned of it. Based on his review of the computer trail evidence, Miller believed Fenton was actually the person who had hacked into Halder's computer and maliciously deleted the files that contained Halder's perceived life work.[3]

Thus, many managerial, supervising, and employee personnel at CWRU were on actual notice of the direct threat of deadly harm at the Weatherhead School by Halder should he lose his civil appeal. Further, CWRU employees (Chris Fenton and Janis Kaghazwala) had acutally hacked into Halder's website and intentionally provoked Halder. However, the trial court and court of appeals failed to impute any of this knowledge and acts of CWRU employees to CWRU in connection with the courts' analysis of the facts known to CWRU at the time of Halder's rampage.

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[3] Chris Fenton lived with girlfriend, Janis Kaghazwala, who was another CWRU employee. An investigation conducted by Halder's attorney in his lawsuit against Miller uncovered the telephone number from which Halder's computer was hacked, and this number was traced to the home of Kaghazwala. In March 2002 Halder moved to join Weatherhead School of Management into his lawsuit, and attempted to compel discovery from Weatherhead. CWRU opposed both motions and both were denied. In May 2002 Halder moved to join Kaghazwala, and that motion was also denied.

During Halder's trial for murder in 2005, Miller, who admitted that he hated Halder, testified that he figured out the identity of the culprit after his deposition was taken in Halder's civil lawsuit and that he revealed Chris Fenton's name to his attorney. At the murder trial both Fenton and Kaghazwala asserted their privilege against self incrimination when asked about the hacking. After the trial, CWRU fired both of them.

REASON FOR GRANTING THE PETITION

Argument No. 1: The decision to allow a case to a jury is guided by the substantive evidence standards that apply. It is one thing for a court to determine if a party can meet its evidentiary burden. It is completely different and unconstitutional matter for a court to decide for itself which side has presented the most plausible story. The court should decide only whether the party opposing the motion has presented a plausible story. The Ohio rule, to the contrary articulated in Reitz, invades the province of the jury. See. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

Under Ohio law, a business owes a duty to prevent a third person from harming another when a "special relationship" exists between the actor and the other. *Gelbman v. Second Nat'l Bank of Warren*, 9 Ohio St. 3d 77, 458 N.E.2d 1262 (1984) (adopting 2 Restatement of the Law 2d, Torts (1965) 122, Section 315(b)). Such a "special relationship" exists between a business like CWRU, and its invitee, like Norman Wallace. *See Reitz v. May Co. Dep't Stores*, 66 Ohio App. 3d 188, 583 N.E.2d 1071 (1990); *see, also, Baldauf v. Kent State Univ.*, 49 Ohio App. 3d 46, 47-48, 550 N.E.2d 517 (1988) (student's presence on university campus undisputedly accorded her status of invitee). As part of this duty to invitees, the Ohio Supreme Court has also declared that "a business owner has a duty to warn or protect its business invitees from criminal acts of third parties when the business owner knows or should know that there is a substantial risk of harm to its invitees on the premises in the possession and

control of the business owner." *Simpson v. Big Bear Stores Co.*, 73 Ohio St. 3d 130, 135, 652 N.E.2d 70 (1995). In other words, a duty exists where a risk is reasonably foreseeable. *See Menifee v. Ohio Welding Prods., Inc.*, 15 Ohio St. 3d 75, 77, 472 N.E.2d 707, 710 (1984); *see also Semadeni v. Ohio Dep't of Transp.*, 75 Ohio St. 3d 128, 661 N.E.2d 1013 (1996) (where decedent was killed by an object thrown from an overpass court held state highway department had a duty to foreseeable travelers to take adequate measures to timely install protective fencing on overpasses).

The Ohio Courts of Appeal "are split on the appropriate test for foreseeability" with respect to criminal acts of third parties. *Whisman v. Gator Invest. Props., Inc.*, 149 Ohio App. 3d 225, 234, 776 N.E.2d 1126 (2002), citing *Heys v. Blevins*, Montgomery App. No. 16291, 1997 Ohio App. LEXIS 2536 (June 13, 1997). As the *Whisman* court explained: "The totality-of-the-circumstances test takes into consideration not only past experiences but also 'such factors as the location of the business and the character of the business to determine whether the danger was foreseeable.'" *Id.*, quoting *Heys*, *citing Reitz v. May Co. Dep't Stores*, 66 Ohio App. 3d 188, 193 (1990), *jurisdictional motion overruled*, 52 Ohio St. 3d 704, 556 N.E.2d 529. "Under this test, the totality of the circumstances must be 'somewhat overwhelming' to result in a duty to protect third parties against criminal acts of others." *Whisman*, at 234, quoting *Reitz*, at 193-194. However, "under the other test, 'the occurrence of prior similar acts suggests that the danger was foreseeable.'" *Whisman*, at 234, citing *Heys*. *See, also, McKee v. Gilg*, 96 Ohio App. 3d 764, 767, 645 N.E.2d 1320 (1994) (wherein court discussed

"totality of the circumstances" and "prior similar acts" tests of foreseeability); *Haralson v. Banc One Corp.*, Franklin App. No. 97APE08-1134, 1998 Ohio App. LEXIS 1631, *appeal not allowed*, 83 Ohio St. 3d 1419, 698 N.E.2d 1007 (Apr. 16, 1998) (discussing "totality of the circumstances" and "prior similar acts" tests of foreseeability).

Petitioner respectfully submits that the existence of a duty to protect students, staff and faculty at a university from the criminal acts of others should turn on whether the university knew or should have known that the third party presented a danger to these invitees on campus. Additionally, the "'foreseeability of criminal acts will depend on the knowledge of the [university], which must be determined from the totality of the circumstances.'" *Maier v. Serv-All Maint., Inc.*, 124 Ohio App. 3d 215, 222, 705 N.E. 1268, 1272 (1997) (quoting *Feichtner v. City of Cleveland*, 95 Ohio App. 3d 388, 396, 642 N.E.2d 657 (1994).

Thus, in this case the relevant inquiry should be whether CWRU knew or should have known from the **totality of the circumstances** that Halder posed a threat of harm to its invitees, which necessarily includes their student Norman E. Wallace. This means that the court must take into account the special nature of the academic enterprise and the special nature of risk that is attendant to this enterprise. Professor Helen DeHaven, who has undertaken an in depth study of rampage shootings in higher education, made the following pertinent observations with respect to several such circumstances in this case – circumstances which neither which neither the trial court nor the court of appeals took into account in

ruling CWRU had no responsibility for Halder's rampage:

> First, the analysis...adopted by the court does not take account of the special nature of the academic enterprise, nor the nature of the risk involved. Respect for intellectual work of others is a traditional academic value about which there is a high level of consensus in the academic community. It is a necessary component of academic freedom and scholarly productivity. It is common to all academic communities, especially high-ranking research universities like CWRU. When the college or university guards and implements such a value for the scholarly community (and, in terms of the business model trades on it), it is to be expected that it will maintain professional standards of conduct and accountability in the computer labs where intellectual work is pursued. If a person's intellectual work is nevertheless deliberately destroyed [as in Halder's case], a college or university should be at least as diligent in discovering the culprits as defending against false complaints. If it negligently fails to take appropriate action, its inattention can contribute to significant disorder and dysfunction not least by disappointing the legitimate expectations of its students with respect to the safety of their work. Second, the analysis [by the trial court in granting CWRU's motion for summary judgment against Appellant] does not take into account the special risks of academic life. Scholars may become deeply disturbed over issues involving their intellectual work product.

In the [Norman E.] Wallace litigation, the University made much of the fact that Halder had no history of violent or criminal behavior and was not known to own a gun, but the same can be said of most academic rampagers, few of whom make direct threats. Guns are easy to obtain. Every rampage killer also has obtained his weapons quickly and lawfully. Murders that occur as a result of academic-related conflicts are most likely to occur at the Institution, not at the victim's home or some other place. In a rampage, innocent people are always hurt. Given the academy's experience with violent graduate students, a reasonable jury might find that a prudent college or university should take it seriously when a student with known grievances and frustrations about the destruction of his work actually threatens to kill those responsible. A jury might well find it imprudent for a school to let its employees treat threats by students as purely personal conflicts, with only personal safety implications. On the other hand, it is both prudent and consistent with a school's educational mission to discourage threatening behavior.

Third, the premises liability analysis [undertaken by the trial court in this case] elevates location over relationship in a way that does not necessarily comport with the realities of the situation. In terms of the foreseeability of his attack on the school, the analysis adopted by the court placed far greater emphasis on the fact that Halder left campus in August 2000 than on the substantial, and increasingly negative, relationship that continued through

> his litigation against the University and its personnel.

Helen DeHaven, *The Elephant in the Ivory Tower: Rampages in Higher Education and the Case for Institutional Liability*, 35 J.C. & U.L. 503, 601-603 (2009) (footnotes omitted).

In this case, Petitioner presented a wealth of evidence in response to CWRU's summary judgment which showed CWRU actually knew and should have known that Halder posed a threat of the very danger that occurred. From nearly the beginning of his relationship with CWRU, Halder waived red flag after red flag which should have alerted CWRU to his propensity to cause harm to others. That red flag turned into a flare gun and the notice of the danger he posed was far more than "somewhat overwhelming" when Haler made his specific threat of shooting people at the Weatherhead School should he lose his appeal. Therefore, the shooting incident of May 9, 2003 was certainly foreseeable to CWRU.

Unfortunately, the trial court and the court of appeals failed to impute knowledge of CWRU's supervisory employees to CWRU in connection with both courts' analysis of the facts known to CWRU at the time of Halder's rampage. This failure was contrary to well-established Ohio law, under which knowledge of employees should be imputed to an employer if the knowledge was acquired by the employee while acting within the scope of employment. *American Fin. Corp. v. Fireman's Fund Ins. Co.*, 15 Ohio St. 2d 171, 174, 239 N.E.2d 33 (1968). Because the courts below did not adhere to this basic rule of

law, they did not take key evidence into account in ruling on CWRU's motion for summary judgment.

To summarize this evidence, the record on summary judgment established that a CWRU computer lab employee deliberately hacked the website of Halder in July 2000, while Halder was still a student in good standing at the University. Halder thereafter engaged in a protracted dispute with CWRU right up until the time of the shooting of Petitioner's decedent. Halder sent broadcast emails, filed complaints with University and law enforcement officials concerning his grievances against CWRU, and eventually filed litigation against CWRU employee, Shaw Miller. CWRU financed Miller's defense, and also successfully fought Halder's attempt to obtain discovery and join CWRU in the action. Halder communicated death threats to CWRU that were of such a disturbing nature that law student Phil Helon warned Shaw Miller, who then reported the threats to his supervisor in the computer lab. Later, upon Halder's case against Miller being dismissed, Halder's threats produced such fear that Miller requested both through CWRU and local police, additional security for his home and family. Critically, these activities occurred in close proximity – there was no "lengthy gap between Halder's last contact with CWRU in August 2000 and the shooting death of Norman Wallace in May 2003" as the court of appeals mistakenly found in concluding that Halder's actions were not foreseeable to CWRU. Court of Appeals Decision, at P40. Further, CWRU knew Chris Fenton and his girlfriend accomplice had actually intentionally provoked Halder deleting his files, because Fenton and his girlfriend's knowledge should have been imputed to CWRU.

The trial court failed to consider the foregoing evidence in opposition to the summary judgment motion. The grant of summary judgment to CWRU thus not only wrongfully deprived Appellant of his right to a jury trial, but this erroneous application of the premises liability standards threatens the safety of college campuses in this State as long as this decision stands. Accordingly, Appellant urges this Court to accept this important case for review on the merits.

Under Rule 56, all admissible evidence should be considered in opposition to a motion for summary judgment. *See Norwalk v. Cochran*, 108 Ohio App. 3d 181, 670 N.E.2d 493 (1995) (court's failure to consider all the evidence before it on summary judgment always constitutes reversible error). In *Murphy v. Reynoldsburg*, 65 Ohio St. 3d 356, 604 N.E.2d 138 (1992), the syllabus, the Ohio Supreme Court held as follows:

> Civ.R. 56(C) places a mandatory duty on a trial court to thoroughly examine all appropriate materials filed by the parties before ruling on a motion for summary judgment. The failure of a trial court to comply with this requirement constitutes reversible error.

In this case, the trial court refused to consider the affidavit of Dr. Stephen Miller on the grounds that it was expert testimony and Appellant did not provide an expert report summarizing the expecting testimony of Dr. Miller prior to the deadline set by the court under Cuyahoga County Common Pleas Court Local Rule

21.1. ("L.R. 21.1").[4] The trial court's reliance upon this rule was initially mistaken because the affidavit of Dr. Miller was used as part of motion practice, not trial. *Stewart v. Cleveland Clinic Found.*, 136 Ohio App. 3d 244, 254-255, 736 N.E.2d 491 (1999) (because L.R. 21.1 did not apply to motion practice, it did not prevent consideration on summary judgment affidavit of expert whose report that was not submitted in compliance with L.R. 21.1).

Moreover, the trial court's handling of Dr. Miller's report did not comply with Local Rule 21.1. Under that rule, a non-party expert report may be submitted up until thirty days in advance of trial. Rule 21.1(B). Here the Affidavit of Dr. Miller, a rebuttal expert witness, was not considered by the trial court, even through under L.R. 21.1, Dr. Miller would have been able to testify at trial provided his report was submitted to CWRU thirty days in advance of trial, a point in time far removed from the date when the

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[4] Local Rule 21.1, entitled "Trial Witnesses," provides in relevant part:

> (B) A party may not call a non-party expert witness to testify unless a written report has been procured from the witness and provided to opposing counsel. It is counsel's responsibility to take reasonable measures, including the procurement of supplemental reports, to insure that each report adequately sets forth the non-party expert's opinion. However, unless good cause is shown, all supplemental reports must be supplied no later than thirty (30) days prior to trial. The report of a non-party expert must reflect his opinions as to each issue on which the expert will testify. A non-party expert will not be permitted to testify or provide opinions on issues not raised in his report.

Affidavit was submitted opposition her. See L.R. 21.1(B).

Further, "[a] party has an unconditional right to present rebuttal testimony on matters which are addressed in an opponent's case-in-chief and should not be brought in the rebutting party's case-in-chief." *Phung v. Waste Mgmt., Inc.*, 71 Ohio St. 3d 408, 644 N.E.2d 286 (1994). The affidavit of Dr. Stephen Miller, the substance of which was not considered at all by the trial court in determining CWRU's summary judgment motion, clearly falls into the category of rebuttal testimony. The trial court thus committed reversible error in not considering it. *See id.*; *Murphy v. Reynoldsburg, supra.*

CWRU's expert here, Dr. Monahan, advanced a theory that circumstances did not exist surrounding the shooting on CWRU's campus of Appellant's decedent by Biswanath Halder to have rendered it appropriate to conduct a forensic risk assessment of Halder. This theory was not essential to Appellant's case in chief and not essential to proving that that Halder's acts were foreseeable. Nonetheless, the trial court, in violation of L.R. 21.1 and this Court's precedent, would not permit Dr. Miller's Affidavit to be used to oppose CWRU's motion. This refusal was erroneous and also warrants reversal of the court of appeals' decision. *See Phung v. Waste Mgmt., Inc., supra; Murphy v. Reynoldsburg, supra.*

CONCLUSION

Petitioner requests that this Court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

March 30, 2010

Respectfully submitted,

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